

PLANNING COMMISSION MINUTES

October 3, 2001

CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Gary Bliss, Eric Johansen and Dan Maks. Planning Commissioners Bob Barnard, Russell Davis and Brian Lynott were excused.

Senior Planner John Osterberg, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

On question, Senior Planner John Osterberg indicated that there were no staff communications.

OLD BUSINESS:

CONTINUANCES:

A. APP 2001-0010 – APPEAL OF DAMEROW FORD PAINT BOOTH CONDITIONAL USE PERMIT

This appeal involves the Planning Director's decision to approve with conditions the Conditional Use Permit (CUP 2001-0013) for Damerow Ford Paint Booth Addition, allowing the expansion of a major auto use in the General Commercial (GC) zone, which has been appealed to the Planning Commission for further review.

Observing that this application has been withdrawn, Chairman Voytilla indicated that he is not inclined to discuss the issue.

1 Mr. Osterberg advised Chairman Voytilla that although the application has been
2 withdrawn, it appears on agenda as a formality only for any members of the
3 audience who have an interest in this specific issue.
4

5 **B. OREGON EPISCOPAL SCHOOL MARSH ENHANCEMENT**

6 The following land use applications have been submitted for an enhancement
7 project for the Oregon Episcopal School marsh, which will increase flood storage
8 volume and wetland function while enhancing fish and wildlife habitat. The
9 development proposal is located east of SW Nicol Road, south of Willowmere
10 Drive, and north of Vermont Street, and is more specifically identified on
11 Washington County Assessor's Map 1S1-13, Tax Lots 300 and 400; and
12 Assessor's Map 1S1-13DC, Tax Lot 4000. The site is zoned Urban Standard
13 Density (R-7) and is approximately 29.0 acres in size.
14

15 **1. CUP 2001-0011 – CONDITIONAL USE PERMIT**

16 This application requests approval of a Conditional Use Permit
17 (CUP) for the proposed water conservation/flood control project in
18 the Urban Standard Density (R-7) zoning district. The decision for
19 action on the proposed development shall be based upon the
20 approval criteria listed in Section 40.05.15.2.C.
21

22 **2. TPP 2001-0002 – TREE PRESERVATION PLAN**

23 This application requests approval of a Tree Preservation Plan
24 (TPP) for the proposed grading activity within the boundaries of a
25 Significant Tree Grove. The decision for action on the proposed
26 development shall be based upon the approval criteria listed in
27 Section 40.75.
28

29 Observing that this application has been continued in the past, Mr. Osterberg
30 noted that the applicant requested another continuance, adding that because the
31 request is for an indefinite continuance, re-notification would be mailed out prior
32 to the next scheduled Public Hearing.
33

34 Chairman Voytilla questioned how long an application could be continued
35 indefinitely before there is a problem.
36

37 Commissioner Maks noted that an application must meet the criteria that had been
38 applicable at the time the application was submitted.
39

40 Chairman Voytilla questioned specifically whether the applicant would simply be
41 resubmitting information that has already been submitted.
42

43 Mr. Osterberg advised Chairman Voytilla that the applicant would be submitting
44 additional information, with a revised analysis, study and calculations.
45

1 Commissioner Maks requested clarification of who would be responsible for the
2 cost of the re-notification.

3
4 Mr. Osterberg informed Commissioner Maks that the adopted schedule provides
5 that the applicant pays any re-notification fee.

6
7 Commissioner Maks **MOVED** and Commissioner Johansen **SECONDED** a
8 motion that CUP 2001-0011 – Oregon Episcopal School Marsh Enhancement
9 Conditional Use Permit be continued indefinitely.

10
11 Motion **CARRIED**, unanimously.

12
13 Commissioner Maks **MOVED** and Commissioner Johansen **SECONDED** a
14 motion that TPP 2001-0002 – Oregon Episcopal School Marsh Enhancement Tree
15 Preservation Plan be continued indefinitely.

16
17 Motion **CARRIED**, unanimously.

18
19 **NEW BUSINESS:**

20
21 Chairman Voytilla opened the Public Hearing and read the format for Public
22 Hearings. There were no disqualifications of the Planning Commission members.
23 No one in the audience challenged the right of any Commissioner to hear any of
24 the agenda items, to participate in the hearing or requested that the hearing be
25 postponed to a later date. He asked if there were any ex parte contact, conflict of
26 interest or disqualifications in any of the hearings on the agenda. There was no
27 response.

28
29 **PUBLIC HEARINGS:**

30
31 **A. CUP 2001-0014 – WATERHOUSE COMMONS HOURS OF**
32 **OPERATION**

33 This application requests approval of a Conditional Use Permit (CUP) for the
34 operation of Waterhouse Commons Retail Center between the hours of 6:00
35 a.m. and 1:00 a.m. seven days a week. The site is located within the
36 Community Service (CS) zone, in which a Conditional Use Permit is
37 necessary for uses operating prior to 7:00 a.m. or beyond 10:00 p.m. The
38 proposal is located at the corner of SW Walker Road and SW Outrigger
39 Terrace, and is more specifically identified on Washington County Assessor's
40 Map 1S1-05BA, Tax Lot 2000, and the affected parcel is approximately 3.02
41 acres in size. The decision for action on the proposed development shall be
42 based upon the approval criteria listed in Section 40.05.15.2.C.

43
44 Observing that he had visited the site in the past, Commissioner Bliss indicated
45 that he is familiar with the development proposal.
46

1 Chairman Voytilla commented that he is familiar with the site, which he had
2 recently visited.

3
4 Noting that he had not recently visited the site, Commissioner Johansen
5 emphasized that he is familiar with the site from numerous previous applications.

6
7 Commissioner Maks mentioned that although he had not recently visited the site,
8 he is familiar with the site due to previous applications.

9
10 Mr. Osterberg presented the Staff Report and described the limited scope of the
11 application, specifically the request for extended hours of operation. Observing
12 that the uses within the Community Service (CS) zone are limited to certain hours
13 of operation, he emphasized that not all tenants have same interests and that
14 because CS zone uses and opportunities are wide-ranging, these hours might not
15 provide for an adequate range of uses that may occur in future. Noting that the
16 application meets the applicable criteria, he recommended approval, with four
17 Conditions of Approval. Concluding, he offered to respond to questions and
18 comments.

19
20 Chairman Voytilla referred to Condition of Approval No. 1, which refers to
21 outright uses, observing that Condition of Approval No. 2 provides that approval
22 be required for future uses, expressing concern that these conditions might be
23 considered contradictory.

24
25 Commissioner Maks clarified that Condition of Approval No. 2 involves future
26 uses that require a Conditional Use Permit.

27
28 Chairman Voytilla referred to page 10 of the Staff Report, specifically Findings
29 and Facts citing commercial objectives, and discussed the potential impact to
30 adjacent residential development, specifically the screening and the parking lot.
31 He pointed out that the proposed screening would not address any noise issues.

32
33 Mr. Osterberg mentioned that both Comprehensive Plan policies refer to how
34 special setbacks and screening provisions or aesthetic and functional controls
35 should be developed for uses that are near residential districts. He noted that he
36 had not considered this issue particularly applicable, because it describes what
37 should be done by the Development Code to create special standards for issues
38 such as parking lot setbacks, lighting, landscaping and the Design Review
39 process.

40
41 Chairman Voytilla mentioned that he is specifically concerned with the potential
42 for noise created by equipment, deliveries and maintenance, emphasizing the
43 necessity of providing adequate protection for the adjacent residential
44 neighborhoods.

45

1 Mr. Osterberg agreed that while previous incidents concerning Conditional Use
2 Permits providing for late night operations have been controversial, there have
3 been other similar applications that have not. Noting that Development Code
4 standards should be established in a certain way, he pointed out that these issues
5 are reviewed through the Design Review process, and requested clarification of at
6 what point extra provisions become necessary
7

8 Chairman Voytilla stated that he would like the applicant to expand upon which
9 types of operations they anticipate would occur during the extended hours.
10

11 Commissioner Maks pointed out that past Conditional Use Permits with extended
12 hours had been conditioned with regard to the concerns that had been described,
13 such as trash pickup. He referred to page 4 of the Staff Report, specifically
14 Condition of Approval No. 1, which addresses outright uses, requesting
15 clarification of whether the applicant is requesting hours from 6:00 a.m. to 1:00
16 a.m. for all outright permitted uses allowed by the Development Code. He
17 emphasized that this Conditional Use Permit would “run with the land”,
18 regardless of Development Code and uses which have the potential to change
19 every seven to ten years when the Comprehensive Plan and Development Code
20 are updated. He pointed out that the CS zone currently allows for Automotive
21 Services – Minor, emphasizing that he is concerned that this could result in a *Les*
22 *Schwab Tire Store* open at that location until 1:00 a.m. at some future point. He
23 discussed the provision for Equipment Rental, questioning whether this use could
24 also operate until 1:00 a.m. under the proposal.
25

26 Mr. Osterberg advised Commissioner Maks that he believes that this proposal
27 would allow an equipment rental facility to operate until 1:00 a.m.
28

29 Commissioner Maks questioned whether an equipment rental facility would also
30 provide for outdoor rental.
31

32 Mr. Osterberg assured Commissioner Maks that all activities must occur within an
33 enclosed building within a CS zone.
34

35 Commissioner Maks observed that if he were to rent a rototiller at 1:00 a.m., he
36 would most likely to take it outside and start it up to make certain that the
37 equipment was operable. He referred to retail trade, which could be the
38 equivalent of a *7-11 Store*, and discussed concerns with a reference to the
39 vehicular trip generation, specifically whether any previous land use action
40 conditions the number of vehicular trips at the site.
41

42 Mr. Osterberg commented that he believes that the applicant has referred to the
43 original traffic analysis prepared by *Lancaster & Associates* for the original
44 Waterhouse Commons Subdivision, emphasizing that this does not indicate that
45 this number has been conditioned or required.
46

1 Commissioner Maks clarified that it had not been previously conditioned that the
2 vehicular trip generation should not exceed a certain amount, and questioned
3 whether this action could be conditioned to preclude certain uses.
4

5 Mr. Osterberg advised Commissioner Maks that it is possible to determine that a
6 certain type of use would not be permitted.
7

8 Commissioner Maks suggested the possibility of conditioning the land use action
9 to the existing uses.
10

11 Mr. Osterberg agreed that the Planning Commission could condition the land use
12 action to allow only existing uses, adding that this would require a complete
13 inventory of the existing uses, which should be attached to the applicant's written
14 statement.
15

16 Commissioner Johansen requested clarification of whether the existing uses
17 would be conditioned to operate during the proposed extended hours.
18

19 Commissioner Maks noted that the condition would involve only the extended
20 hours, observing that these uses are permitted outright from 7:00 a.m. to 10:00
21 p.m.
22

23 Commissioner Johansen questioned whether the use restriction would prevent an
24 outdoor patio for dining at a restaurant.
25

26 Mr. Osterberg advised Commissioner Johansen that while the use restriction
27 would prevent an outdoor patio for dining at a restaurant, this is somewhat
28 difficult to enforce, emphasizing that all uses are required to occur within
29 building.
30

31 Commissioner Maks requested clarification of whether the Development Code
32 would prohibit an eating establishment from locating a stage and some form of
33 entertainment in the dining area.
34

35 Mr. Osterberg informed Commissioner Maks that an eating establishment is not
36 prevented from locating a stage and providing entertainment in their dining area.
37

38 On question, Commissioner Bliss indicated that he had no questions regarding
39 this application at this time.
40

41 **APPLICANT:**
42

43 **DAN SALAZAR**, representing *Ankrom, Moison Architects*, on behalf of the
44 applicant, introduced Todd Mobley of *Lancaster Engineering*, pointing out that
45 while he understands Commissioner Maks' concern with other types of uses that
46 may potentially occur, the building had been designed for basic tenant-type,

1 minor retail-oriented businesses. He emphasized that a *Les Schwab Tire Store* is
2 unlikely, adding that this would most likely require major design changes to the
3 building.

4
5 Chairman Voytilla pointed out that while he is aware that the current applicant
6 has no plans for such a use, the land use action runs with the land, adding that
7 ownership could change at some future point.

8
9 Mr. Salazar emphasized that the owner has made every effort to attract quality
10 tenants, adding that all indications are that this would continue in the future. He
11 pointed out that although several other architects have been involved with this
12 particular site, his firm has not been involved in the construction of any facility
13 with a stage. He discussed the rationale for the application for extended hours,
14 pointing out that several of the existing businesses have indicated the necessity of
15 providing late-night meals for customers who are involved in working different
16 shifts. He pointed out that *Hollywood Video* has also expressed a desire for
17 extended hours in order to meet customer needs, noting that their other stores are
18 typically open until midnight, followed by another hour of cleanup activity. He
19 mentioned that the extended early morning hours would provide more flexibility
20 for commuters who would like to stop at the bakery or for coffee as they are
21 traveling to work. He discussed a brief meeting with the Five Oaks/Triple Creek
22 Neighborhood Association, observing that while there had been no real objection
23 to the extended hours, there had been some concerns with the potential for
24 increased noise and traffic.

25
26 **TODD MOBLEY**, representing *Lancaster Engineering*, discussed concerns with
27 the daily trip generation, adding that the current proposal is still less than what
28 had been proposed in the study for the original development. He pointed out that
29 it had been assumed that the original traffic study would still be applicable,
30 adding that the applicant had followed the instructions of the City transportation
31 staff.

32
33 Referring to page 2 of the application regarding traffic impacts, Commissioner
34 Maks observed that reference is made to the worst case scenario impacts upon the
35 adjacent neighborhood and expressed his opinion that because this also applies to
36 all future and permitted uses in this zone, a worst case scenario had not been
37 provided. He emphasized that a *7-11 Store* produces a greater number of
38 vehicular trips than a bank, adding that several ATM Machines would also
39 increase the traffic. He pointed out that he is created with the potential noise,
40 rather than the number of vehicular trips.

41
42 Mr. Mobley advised Commissioner Maks that the worst-case scenario applies to
43 the assumption that each additional hour of operation would generate the same
44 number of vehicular trips.

45
46 Commissioner Maks pointed out that the analysis is based upon the existing uses.

1 Mr. Mobley indicated that the problem with assuming other uses is that there is no
2 trip generation data available for the peak hours for a wide variety of
3 development.

4
5 Commissioner Maks observed that previous applicants had provided vehicular
6 trip generations for convenience stores and fast food restaurants, based upon other
7 such uses, emphasizing that the worst-case scenario presented by the applicant is
8 not accurate. He reiterated that he is concerned with the potential noise impacts
9 for certain uses, rather than the number of vehicular trips. He referred to page 1
10 of the application, which indicates that the tenants range from a major video store
11 to a dry cleaners to family restaurants, adding that these long-term businesses
12 provide much needed and desired services for the surrounding community. He
13 questioned whether all of the businesses included in the narrative have been there
14 since Waterhouse Commons was established and requested that Mr. Salazar
15 provide a definition of what is meant by long-term.

16
17 Observing that he is not certain whether all of the current businesses have been in
18 this location since Waterhouse Commons was established, Mr. Salazar clarified
19 long-term, observing that with respect to building owner, it behooves him to have
20 long-term tenants who remain in the location for years, as opposed to those who
21 would only be located there for a year. He pointed out that this involves an
22 economic issue, noting that tenants who do not stay in the location would increase
23 costs to the owner.

24
25 Commissioner Maks requested information regarding the tenant turnover for the
26 development.

27
28 Observing that the development itself is relatively new, Mr. Salazar mentioned
29 that filling in the tenants is somewhat time-consuming and that all of the spaces
30 have not yet been leased. He pointed out that the owner is attempting to interest
31 tenants who would remain at the site for a long time.

32
33 Commissioner Maks emphasized that he understands the situation and why
34 *Hollywood Video* prefers to remain open until midnight, as well as why a business
35 serving coffee needs to be open at 6:00 a.m., noting that both serve a need to the
36 adjacent properties. He mentioned that his concern is with potential future uses
37 that do not exist at the site at this time, adding that this could create a significant
38 impact (noise, lighting, etc.) on the adjacent neighborhoods, questioning how the
39 applicant intends to address this issue.

40
41 Mr. Salazar stated that it is difficult to monitor which tenants move into the
42 development, pointing out that this could be construed as discrimination. Noting
43 that the Development Code allows certain types of businesses to locate in an area,
44 he emphasized that there is no legit way to prevent this, although common sense
45 and logic, as well as the design of the building, should preclude an automotive
46 shop from locating on the site. He mentioned that a *7-11 Store* would be a more

1 realistic type of business, adding that several fast food chains are currently located
2 in the area.

3
4 Commissioner Maks advised Mr. Salazar that this area is referred to as a “Fast
5 Food Mecca”, adding that the Planning Commission had approved all of these
6 applications.

7
8 Mr. Salazar described the businesses located in Waterhouse Commons as much
9 more low-key than the *7-11 Store* or the fast food chains, with respect to traffic
10 that would be generated, adding that most would operate under typical business
11 hours, with the exception of *Hollywood Video* and the restaurants.

12
13 Commissioner Maks commented that a lot of restaurant business does occur after
14 10:00 p.m., emphasizing that the development is not a “strip mall”.

15
16 Chairman Voytilla referred to a letter in narrative from Mr. David Parr, dated
17 April 18, 2001, and questioned whether there have been any updates to that
18 information.

19
20 Mr. Salazar advised Chairman Voytilla that any updates are minimal, observing
21 that there may be several additional tenants, all of whom would create very little
22 impact.

23
24 Observing that the applicant’s narrative relies on the support by the various
25 tenants, Chairman Voytilla questioned whether there had been any changes
26 among the five tenants who had not indicated a commitment. He discussed the
27 anticipated traffic counts, expressing his opinion that there would not be a great
28 deal of business at the site.

29
30 Mr. Salazar advised Chairman Voytilla that he anticipates that only *Monteaux’s*
31 *Restaurant* and *Hollywood Video* would be taking full advantage of the extended
32 hours, and discussed the rationale for the increased hours, including deliveries to
33 the development.

34
35 Chairman Voytilla referred to the additional late night hour impacts, specifically
36 the comment that the extended hours would allow businesses to properly close
37 down operations following the departure of customers. He questioned what
38 would be involved as far as noise is concerned with closing down operations at
39 the end of the day.

40
41 Mr. Salazar advised Chairman Voytilla that a restaurant would typically want to
42 make certain that customers would have adequate time to enjoy their meals
43 without being rushed by restaurant personnel to allow time for cleaning up the
44 facility. He pointed out that they would want to sterilize and sanitize their
45 equipment, adding that while this is a health issue, it would involve some amount
46 of noise in the kitchen.

1 Chairman Voytilla expressed concern with the noise from the dumpster lid
2 dropping down after trash is disposed of.

3
4 Agreeing that there may be some noise associated with trash disposal, Mr. Salazar
5 described the unique design of the building, observing that because there is no
6 service door out the back, everything would have to go out the front door. He
7 emphasized that this is a challenge for each business, noting that it is necessary to
8 clear out customers prior to any clean up activities.

9
10 On question, Commissioner Bliss indicated that he had no questions at this time.

11
12 Chairman Voytilla suggested the possibility of restricted use, specifically the
13 maintenance and clean up in the parking lot area and utilization of the dumpster
14 after 10:00 p.m.

15
16 Assuring Chairman Voytilla that his concerns are valid, Mr. Salazar pointed out
17 that it is a real challenge for a business to close and clean up at midnight without
18 utilizing the dumpster, expressing his opinion that the owner would attempt to
19 compromise on this issue.

20
21 Commissioner Maks questioned whether Mr. Mobley has a copy of the allowed
22 uses for this site available.

23
24 Observing that he did not have a copy of the Development Code available, Mr.
25 Mobley informed Commissioner Maks that this information is included in the
26 Staff Report.

27
28 Commissioner Maks questioned what Mr. Mobley would consider to be the
29 highest traffic generator possible under Retail/Trade, adding that he thinks this
30 would be a convenience store.

31
32 Mr. Mobley advised Commissioner Maks that a convenience store, or a fast-food
33 restaurant with a drive-through window would generate the greatest amount of
34 traffic.

35
36 Commissioner Maks pointed out that this a drive-through window is not permitted
37 within a Community Service (CS) zone.

38
39 Mr. Osterberg advised Commissioner Maks that a drive-through window is
40 allowed outright within a CS zone.

41
42 Commissioner Maks questioned whether a fast food is considered retail trade or
43 an eating and drinking establishment.

44
45 Mr. Osterberg clarified that because fast food is a restaurant, it is classified as an
46 eating establishment.

47

1 Commissioner Maks questioned whether a convenience store generates a greater
2 amount of traffic than a fast food restaurant.

3
4 Mr. Mobley noted that both a convenience store and a fast food restaurant are
5 high traffic generators.

6
7 Commissioner Maks pointed out that retail trade is particularly all encompassing,
8 emphasizing that certain types of retail use should be prohibited. He discussed
9 the site, expressing his opinion that it had been well designed with regard to being
10 pedestrian-friendly. He suggested conditioning the use to allow all uses allowed
11 outright within retail trade, with the exception of those that generates greater than
12 a certain amount of traffic.

13
14 Mr. Mobley observed that the trip generation for this type of use is based upon the
15 square footage.

16
17 Mr. Salazar questioned whether Commissioner Maks is concerned with the
18 possibility of a drive-through window.

19
20 Commissioner Maks advised Mr. Salazar that is concern is with high-traffic
21 generators.

22
23 Mr. Salazar suggested that Mr. Osterberg would never allow a drive-through
24 window at this site.

25
26 Commissioner Maks emphasized that high-traffic generators create a noise
27 impact, expressing his opinion that there is a significant difference between the
28 existing restaurant and a *7-11 Store*.

29
30 Mr. Salazar expressed his agreement, pointing out that the location and design of
31 the building is not conducive to the addition of a *7-11 Store* at some future time.

32
33 Assistant City Attorney Ted Naemura clarified that permitted uses in this zone
34 should not operate during extended hours if they are classic high-traffic
35 generators.

36
37 Commissioner Maks mentioned that two high-traffic generators are allowed
38 outright within this zone.

39
40 8:15 p.m. to 8:25 p.m. – break.

41
42 Observing that the applicant has not discovered a magic solution, Mr. Mobley
43 noted that some unidentified uses might be unintentionally prohibited.

44
45 Mr. Osterberg discussed the comments regarding limitations, observing that staff
46 does not generally recommend any types of limitations based upon trip

1 generation. He mentioned that several prior applicants, specifically the “K”
2 *Appliance* rezone, have made such a recommendation, adding that although it
3 might initially sound pretty good, there are other issues involved. He
4 recommended against these restrictions, emphasizing that the Planning
5 Commission should judiciously consider identifying several types of land uses
6 that should be prohibited, emphasizing that that it would be difficult to administer
7 a restriction prohibiting convenience stores.

8
9 Commissioner Maks noted that he is aware that staff does not like to condition
10 approval based upon trip generation, although there have been past applicants
11 who requested such conditions, emphasizing that some other jurisdictions manage
12 to take this action. He questioned whether the ITE Manual provides a definition
13 of a convenience store.

14
15 Mr. Salazar pointed out that a section in each category in the ITE Manual
16 describes the characteristics of each type of use.

17
18 Commissioner Maks observed that he has seen convenience stores listed in the
19 ITE Manual for previous applications.

20
21 **PUBLIC TESTIMONY:**

22
23 On question, no member of the public appeared to testify regarding the
24 application.

25
26 On question, Mr. Naemura indicated that he had no further questions or
27 comments.

28
29 Mr. Osterberg mentioned that he is concerned with the fact that the businesses
30 listed in the applicant’s letter dated April 18, 2001 are listed by the name of the
31 business, which does not necessarily indicate the type of land use. He specifically
32 referred to *Aye Carumba!* observing that while this is a phrase commonly used by
33 Bart Simpson of the television show *The Simpsons*, it does not actually reflect any
34 particular land use. He mentioned that he is also not certain whether *Thai Orchid*
35 is a flower shop or a restaurant, emphasizing that the applicant has submitted a list
36 of business names, rather than land uses.

37
38 The public portion of the Public Hearing was closed.

39
40 Commissioner Johansen expressed his opinion that our society has an increasing
41 tendency to work longer and more varied hours. He discussed the site, observing
42 that it is located on Walker Road, which is an arterial street, near the intersection
43 of Walker Road and 158th Avenue, which is another arterial street, and
44 surrounded on three sides by commercial use. He pointed out that while the only
45 residential property abutting this site is located to the west, the neighborhood

1 meeting process had not determined any major concerns, adding that he is in
2 support of the application.

3
4 Chairman Voytilla expressed his support of the application, adding that there
5 appears to be an adequate level of service. He noted that he does not support
6 imposing certain restrictions, based upon traffic generation, adding that this is too
7 difficult to monitor, quantify and enforce. He suggested the possibility of basing
8 a restriction upon the uses that are currently located at the site, cautioning that this
9 action could also interfere with free enterprise.

10
11 Commissioner Bliss stated that he approves of the application and staff
12 recommendations, although he is amenable to additional Conditions of Approval.

13
14 Commissioner Maks expressed his agreement with the previous comments,
15 emphasizing that the facility is very well designed and pedestrian-oriented.
16 Observing that there is a need for some of these businesses to be open early in the
17 morning and late at night, he pointed out that it is necessary to respect the
18 character of the surrounding area with regard to noise and light. He noted that he
19 would very reluctantly deny or condition this proposal to the existing uses, adding
20 that he is concerned with future uses as well as current uses, and emphasized that
21 he would not consider approving Automotive Services – Minor or Equipment
22 Rental.

23
24 Commissioner Bliss requested clarification of whether the Planning Commission
25 has the authority to define their understanding of a convenience store for the
26 purpose of creating a Condition of Approval to exclude this particular type of use.

27
28 Commissioner Maks questioned whether the Planning Commission is able to
29 make a finding excluding convenience stores “as to be determined by the
30 Planning Director”.

31
32 Mr. Naemura observed that this type of a Condition of Approval begins to stray
33 beyond the boundaries of the Development Code into the realm of enforcement.
34 He noted that this could be addressed through a Civil Code violation setting,
35 which does not interpret the code in the same manner as a land use setting. He
36 emphasized that enforcement is a different arena, pointing out that this is what has
37 occurred in previous issues, such as “The Hoop”.

38
39 Commissioner Maks commented that permitted uses under services are
40 categorized as personal, business, professional, amusement, recreation,
41 educational, including public and private, equipment rental and other similar
42 services *as determined by the Planning Director*.

43
44 Mr. Naemura mentioned that this particular was drafted when the applicant
45 requested permission to site a particular use on a certain site, emphasizing that he

1 believes that this is a service. He pointed out that if the service changed form into
2 another type of use, this would involve an enforcement issue.

3
4 Chairman Voytilla stated that Commissioner Maks had brought up a very valid
5 issue, specifically that this is the first time that this type of application has been
6 submitted that would affect multiple spaces. He explained that this is typically
7 addressed through single applications, single requests and single businesses. He
8 stated that it is the function of the Planning Commission to administer the
9 Development Code equally and impartially. He pointed out that because of the
10 potential outright uses that could extend into the additional hours, there could be
11 traffic and noise impacts that have not yet been anticipated, adding that he does
12 not feel comfortable approving the application without certain restrictions.
13 Observing that there are many interpretations of a convenience store, he noted
14 that it is not fair to the property owner to impose these restrictions.

15
16 Commissioner Maks stated that if he is basing his decision on the evidentiary
17 record, what has been presented indicates that an extension of the hours for these
18 businesses would not create an impact, adding that this addresses his concern with
19 traffic issues.

20
21 Mr. Osterberg noted that under traditional circumstances, this land use would not
22 be restricted based upon a particular tenant, emphasizing that a convenience store
23 is a grocery store and is actually considered the same type of use as *Haggens*
24 *Store* and *Albertson's*.

25
26 Observing that Commissioner Bliss had expressed support of the application
27 outright, Chairman Voytilla pointed out that Commissioners Johansen and Maks
28 and himself had indicated that they would support the application with additional
29 Conditions of Approval.

30
31 Commissioner Johansen advised Chairman Voytilla that he had stated that while
32 he would support the application as is, he would be receptive to additional
33 Conditions of Approval.

34
35 Commissioner Maks mentioned that any new retail use would be required to
36 submit an application for a Conditional Use Permit. He stated that if he
37 conditioned *Haggens Store* to be allowed to operate until 2:00 a.m., would *K-*
38 *Mart* also be allowed to operate until 2:00 a.m.

39
40 Mr. Osterberg reminded Commissioner Maks that because the Conditional Use
41 Permit runs with the land, *K-Mart*, which is the same type of use, should also be
42 allowed to operate during these extended hours.

43
44 Following a brief discussion of approving the application, as is, and imposing
45 additional Conditions of Approval, Commissioner Maks emphasized that the
46 decision must be based upon the evidence presented. He mentioned that he has

1 seen no evidence that indicates that Automotive Services – Minor or Equipment
2 Rental, with the proposed expanded hours, would not have a negative impact
3 upon the neighborhood.
4

5 Mr. Naemura suggested the possibility of a motion to approve the application
6 with a Condition of Approval that would not extend the extended hours privilege
7 to Automotive Services – Minor or Equipment Rental.
8

9 Commissioner Bliss observed that the applicant had not thought to consider all
10 what-ifs and what could occur within the development, adding that the likelihood
11 of some of these possibilities is relatively small.
12

13 Chairman Voytilla reminded Commissioner Bliss that the likelihood of some of
14 these possibilities is relatively small only so long as the current applicant retains
15 ownership of the development.
16

17 Commissioner Bliss expressed his opinion that the Commission is being too
18 exclusive, emphasizing that the application involves extended hours, not uses.
19

20 Commissioner Maks mentioned that Commissioner Bliss' comments are well
21 considered, emphasizing that it is necessary to consider all these possibilities. He
22 suggested the addition of a Condition of Approval that the extended hours
23 provision would not exceed the number of vehicular trips that would have been
24 generated by the initial proposal.
25

26 Chairman Voytilla questioned how Commissioner Maks feels about Mr.
27 Naemura's suggestion for a Condition of Approval that would not extend the
28 extended hours privilege to Automotive Services – Minor or Equipment Rental.
29

30 Commissioner Maks advised Chairman Voytilla that although he has no problem
31 with Mr. Naemura's suggestion, this would involve an amendment to the main
32 motion. Observing that the applicant has indicated that the extended hours would
33 not create any impact, he reiterated that the approval should be conditioned to
34 provide that the daily traffic generated would not exceed 3,000 or 3,500 vehicular
35 trips.
36

37 Commissioner Johansen questioned whether the noise issue has ever been
38 addressed based upon traffic counts.
39

40 Commissioner Maks informed Commissioner Johansen that the noise issue has
41 been addressed based upon traffic counts in the past, adding that this has
42 necessitated additional screening. He discussed the amount of traffic generated
43 by cigarette purchases alone, observing that because the number of vehicular trips
44 generated would not exceed 2,830, the evidence presented indicates that the
45 extended hours would not create an impact. He expressed his desire to resolve the
46 issue and approve the application, with the exception of Auto Services – Minor,

1 adding that he is not particularly concerned with Equipment Rental, emphasizing
2 that the proposal is good and he would like to move forward.

3
4 Commissioner Maks **MOVED** that CUP 2001-0014 – Waterhouse Commons
5 Hours of Operation Conditional Use Permit be approved, based upon the
6 testimony, reports and exhibits presented during the Public Hearing on the matter
7 and upon the background facts, findings and conclusions found in the Staff Report
8 dated September 26, 2001, including Conditions of Approval Nos. 1 through 4;
9 and based upon this Public Hearing, with modification to Condition of Approval
10 No. 1, as follows:

- 11
12 1. Existing and future uses within the Waterhouse Commons
13 development which are permitted outright, **excluding Auto Services --**
14 **Minor**, by the Beaverton Development Code are limited to the
15 following hours of operation: 6:00 a.m. to 1:00 a.m., all days of the
16 week.

17
18 and including additional Condition of Approval No. 5, as follows:

- 19
20 5. The mixture of uses within Waterhouse Commons shall not exceed a
21 daily site generation of 3,500 vehicular trips.

22
23 Mr. Osterberg recommended that Condition of Approval No. 5 be revised, as
24 follows:

- 25
26 5. The mixture of uses within Waterhouse Commons, **subject to this**
27 **permit**, shall not exceed a daily site generation of 3,500 vehicular
28 trips.

29
30 Upon clarification from Mr. Naemura, Commissioner Maks indicated that his
31 motion remains as originally stated, adding that there has been no second to his
32 motion.

33
34 Chairman Voytilla questioned why Commissioner Maks is opposed to including
35 Equipment Rental in Condition of Approval No. 1.

36
37 Commissioner Maks amended his motion, with regard to Condition of Approval
38 No. 1, as follows:

- 39
40 1. Existing and future uses within the Waterhouse Commons
41 development which are permitted outright, excluding Auto Services –
42 **Minor and Equipment Rental**, by the Beaverton Development Code
43 are limited to the following hours of operation: 6:00 a.m. to 1:00 a.m.,
44 all days of the week.

45

Commissioner Maks observed that the trip generation of 3,500 referred to in Condition of Approval No. 5 is subject to discussion.

Mr. Naemura advised that Condition of Approval No. 5 should be amended as recommended by Mr. Osterberg, specifically the phrase "subject to this permit".

Commissioner Maks emphasized that an overall total of 3,500 vehicular trips is to be generated by the site.

Commissioner Johansen pointed out that this trip generation is based upon a 24-hour traffic count, rather than extended hours traffic count.

Commissioner Bliss **SECONDED** the motion, as amended.

Motion **CARRIED**, unanimously.

APPROVAL OF MINUTES:

Minutes of the meeting of August 15, 2001, submitted. Commissioner Maks requested that line 29 of page 1 be amended, as follows:

~~"Chairman Voytilla~~ **Vice-Chairman Maks** asked if there were any visitors in the audience..."

Commissioner Maks requested that line 20 of page 7 be amended, as follows:

~~"Referring to the 80% density rule,~~ Vice-Chairman Maks noted..."

Commissioner Maks **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved, as amended.

Motion **CARRIED**, unanimously, with the exception of Chairman Voytilla, who abstained from voting on this issue.

Minutes of the meeting of August 22, 2001, submitted. Commissioner Bliss **MOVED** and Commissioner Johansen **SECONDED** a motion that the minutes be approved as written.

Motion **CARRIED**, unanimously.

Minutes of the meeting of August 29, 2001, submitted. Commissioner Johansen **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved as written.

Motion **CARRIED**, unanimously, with the exception of Commissioner Maks, who abstained from voting on this issue.

1 Minutes of the meeting of September 5, 2001, submitted. Commissioner Maks
2 **MOVED** and Commissioner Johansen **SECONDED** a motion that the minutes be
3 approved as written.

4

5 Motion **CARRIED**, unanimously, with the exception of Commissioner Bliss,
6 who abstained from voting on this issue.

7

8 **MISCELLANEOUS BUSINESS:**

9

10 Observing that no meeting is scheduled for Wednesday, October 10, 2001,
11 Chairman Voytilla expressed concern with quorum issues, adding that
12 Commissioner Davis has been experiencing some health problems and that he has
13 not heard from Commissioner Lynott.

14

15 The meeting adjourned at 9:34 p.m.